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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 **Scott Johnson**

17 Plaintiff,

18 v.

19 **Hub's Coffee LLC**, a
20 California Limited Liability
21 Company

22 Defendants.

23 **Case No.**

24 **Complaint For Damages And
25 Injunctive Relief For Violations
26 Of: Americans With Disabilities
27 Act; Unruh Civil Rights Act**

28 Plaintiff Scott Johnson complains of Hub's Coffee LLC, a California
1 Plaintiff Scott Johnson complains of Hub's Coffee LLC, a California
2 Limited Liability Company; and alleges as follows:
3
4

5 **PARTIES:**

6 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
7 level C-5 quadriplegic. He cannot walk and also has significant manual
8 dexterity impairments. He uses a wheelchair for mobility and has a specially
9 equipped van.
10
11 2. Defendant Hub's Coffee LLC owned Hub's Coffee located at or about
12 630 Blossom Hill Rd, San Jose, California, in March 2021 and April 2021.
13

1 3. Defendant Hub's Coffee LLC owns Hub's Coffee located at or about
2 630 Blossom Hill Rd, San Jose, California, currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of the Defendants
11 are ascertained.

12

13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to Hub's Coffee in March 2021 and April 2021 (two
27 times) with the intention to avail himself of its goods or services motivated in
28 part to determine if the defendants comply with the disability access laws.

1 9. Hub's Coffee is a facility open to the public, a place of public
2 accommodation, and a business establishment.

3 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
4 to provide wheelchair accessible sales counters in conformance with the ADA
5 Standards as it relates to wheelchair users like the plaintiff.

6 11. Hub's Coffee provides sales counters to its customers but fails to
7 provide any wheelchair accessible sales counters.

8 12. A problem that plaintiff encountered was that the sales counter was too
9 high. There was no counter that was 36 inches or less in height that plaintiff
10 could use for his transactions.

11 13. Plaintiff believes that there are other features of the sales counters that
12 likely fail to comply with the ADA Standards and seeks to have fully compliant
13 sales counters for wheelchair users.

14 14. On information and belief, the defendants currently fail to provide
15 wheelchair accessible sales counters.

16 15. Additionally, on the dates of the plaintiff's visits, the defendants failed
17 to provide wheelchair accessible dining surfaces in conformance with the ADA
18 Standards as it relates to wheelchair users like the plaintiff.

19 16. Hub's Coffee provides dining surfaces to its customers but fails to
20 provide wheelchair accessible dining surfaces.

21 17. One problem that plaintiff encountered was the lack of sufficient knee
22 or toe clearance under the outside dining surfaces for wheelchair users.

23 18. Plaintiff believes that there are other features of the dining surfaces that
24 likely fail to comply with the ADA Standards and seeks to have fully compliant
25 dining surfaces for wheelchair users.

26 19. On information and belief, the defendants currently fail to provide
27 wheelchair accessible dining surfaces.

28 20. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
3 wheelchair accessible facilities. By failing to provide accessible facilities, the
4 defendants denied the plaintiff full and equal access.

5 22. The failure to provide accessible facilities created difficulty and
6 discomfort for the Plaintiff.

7 23. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 24. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 25. Plaintiff will return to Hub's Coffee to avail himself of its goods or
17 services and to determine compliance with the disability access laws once it is
18 represented to him that Hub's Coffee and its facilities are accessible. Plaintiff
19 is currently deterred from doing so because of his knowledge of the existing
20 barriers and his uncertainty about the existence of yet other barriers on the
21 site. If the barriers are not removed, the plaintiff will face unlawful and
22 discriminatory barriers again.

23 26. Given the obvious and blatant nature of the barriers and violations
24 alleged herein, the plaintiff alleges, on information and belief, that there are
25 other violations and barriers on the site that relate to his disability. Plaintiff will
26 amend the complaint, to provide proper notice regarding the scope of this
27 lawsuit, once he conducts a site inspection. However, please be on notice that
28 the plaintiff seeks to have all barriers related to his disability remedied. See

1 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 2 encounters one barrier at a site, he can sue to have all barriers that relate to his
 3 disability removed regardless of whether he personally encountered them).

4

5 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 6 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 7 Defendants.) (42 U.S.C. section 12101, et seq.)

8 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 9 again herein, the allegations contained in all prior paragraphs of this
 10 complaint.

11 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 12 privileges, advantages, accommodations, facilities, goods and services of any
 13 place of public accommodation is offered on a full and equal basis by anyone
 14 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 15 § 12182(a). Discrimination is defined, *inter alia*, as follows:

16 a. A failure to make reasonable modifications in policies, practices,
 17 or procedures, when such modifications are necessary to afford
 18 goods, services, facilities, privileges, advantages, or
 19 accommodations to individuals with disabilities, unless the
 20 accommodation would work a fundamental alteration of those
 21 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

22 b. A failure to remove architectural barriers where such removal is
 23 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 24 defined by reference to the ADA Standards.

25 c. A failure to make alterations in such a manner that, to the
 26 maximum extent feasible, the altered portions of the facility are
 27 readily accessible to and usable by individuals with disabilities,
 28 including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
2 the bathrooms, telephones, and drinking fountains serving the
3 altered area, are readily accessible to and usable by individuals
4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 29. When a business provides sales or transaction counters, it must provide
6 accessible sales or transaction counters.

7 30. Here, accessible sales or transaction counters have not been provided in
8 conformance with the ADA Standards.

9 31. When a business provides dining surfaces, it must provide accessible
10 dining surfaces.

11 32. Here, accessible dining surfaces have not been provided in
12 conformance with the ADA Standards.

13 33. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 34. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 35. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21

**22 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
23 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)**

25 36. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
2 every kind whatsoever within the jurisdiction of the State of California. Cal.
3 Civ. Code § 51(b).

4 37. The Unruh Act provides that a violation of the ADA is a violation of the
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 38. Defendants' acts and omissions, as herein alleged, have violated the
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
8 rights to full and equal use of the accommodations, advantages, facilities,
9 privileges, or services offered.

10 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiff, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14 40. Although the plaintiff encountered frustration and difficulty by facing
15 discriminatory barriers, even manifesting itself with minor and fleeting
16 physical symptoms, the plaintiff does not value this very modest physical
17 personal injury greater than the amount of the statutory damages.

18

19

PRAYER:

20 Wherefore, Plaintiff prays that this Court award damages and provide
21 relief as follows:

22 1. For injunctive relief, compelling Defendants to comply with the
23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
24 plaintiff is not invoking section 55 of the California Civil Code and is not
25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. For equitable nominal damages for violation of the ADA. See
27 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
28 and any other equitable relief the Court sees fit to grant.

1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5
6 Dated: May 20, 2021

 CENTER FOR DISABILITY ACCESS

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8 By: 

9
10 Amanda Seabock, Esq.
11 Attorney for plaintiff